



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

Bruce Whitehead

Respondent Name

Commerce & Industry Insurance Company

MFDR Tracking Number

M4-17-2368-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

April 7, 2017

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "THE CURRENT RULES ALLOW REIMBURSEMENT"

Amount in Dispute: \$500.00

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: Submitted documentation does not include a position statement from the respondent. Accordingly, this decision is based on the information available at the time of review.

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
August 15, 2016	Designated Doctor Examination	\$500.00	\$500.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

- 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
- 28 Texas Administrative Code §134.204 sets out the fee guidelines for division-specific services from March 1, 2008 until September 1, 2016.
- 28 Texas Administrative Code §127.10 sets out the procedures for designated doctor examinations.
- The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
 - Workers' compensation jurisdictional fee schedule adjustment.
 - The charge for the procedure exceeds the amount indicated in the fee schedule.
 - The reported modifier is not valid for the procedure code or service.

Issues

1. Did Commerce & Industry Insurance Company respond to the medical fee dispute?
2. What are the services considered in this dispute?
3. Is the Commerce & Industry Insurance Company's reasons for denial of payment supported?
4. Is Bruce Whitehead, M.D. entitled to additional reimbursement?

Findings

1. The Austin carrier representative for Commerce & Industry Insurance Company is Flahive, Ogden & Latson. Flahive, Ogden & Latson acknowledged receipt of the copy of this medical fee dispute on April 14, 2017. 28 Texas Administrative Code §133.307 states, in relevant part:

(d) Responses. Responses to a request for MFDR shall be legible and submitted to the division and to the requestor in the form and manner prescribed by the division.

- (1) Timeliness. The response will be deemed timely if received by the division via mail service, personal delivery, or facsimile **within 14 calendar days after the date the respondent received the copy of the requestor's dispute** [emphasis added]. If the division does not receive the response information within 14 calendar days of the dispute notification, then the division may base its decision on the available information.

Review of the documentation finds that no response has been received on behalf of Commerce & Industry Insurance Company from Flahive, Ogden & Latson to date. The division concludes that Commerce & Industry Insurance Company failed to respond within the timeframe required by §133.307(d)(1). For that reason the division will base its decision on the information available.

2. Dr. Whitehead is seeking an additional reimbursement of \$300.00 for an examination to determine maximum medical improvement and impairment rating, represented by procedure code 99456-W5-WP. Dr. Whitehead is also seeking reimbursement for four additional findings of impairment because extent of injury was simultaneously addressed, represented by procedure code 99456-W5-MI. These are the services considered in this dispute.
3. The insurance carrier denied procedure code 99456-W5-MI with claim adjustment reason "The reported modifier is not valid for the procedure code or service." 28 Texas Administrative Code §134.204(i)(A) states that designated doctors shall bill and be reimbursed as follows "Impairment caused by the compensable injury shall be billed and reimbursed in accordance with subsection (j) of this section, and the use of the additional modifier "W5" is the first modifier to be applied when performed by a designated doctor."

28 Texas Administrative Code §134.204(j)(4)(B) states: "When multiple IRs are required as a component of a designated doctor examination ..., the designated doctor shall bill for the number of body areas rated and be reimbursed \$50 for each additional IR calculation. Modifier 'MI' shall be added to the MMI evaluation CPT code."

The division concludes that the insurance carrier's denial reason is not supported. The disputed services will therefore be reviewed per applicable Division rules and fee guidelines.

4. Per 28 Texas Administrative Code §134.204(j)(3), "The following applies for billing and reimbursement of an MMI evaluation... (C) An examining doctor, other than the treating doctor, shall bill using CPT Code 99456. Reimbursement shall be \$350." The submitted documentation supports that Dr. Whitehead performed an evaluation of maximum medical improvement. Therefore, the maximum allowable reimbursement (MAR) for this examination is \$350.00.

Per 28 Texas Administrative Code §134.204(j)(4), "The following applies for billing and reimbursement of an IR evaluation. ... (C)(ii) The MAR for musculoskeletal body areas shall be as follows. ... (II) If full physical evaluation, with range of motion, is performed: (-a-) \$300 for the first musculoskeletal body area." The submitted documentation supports that Dr. Whitehead provided an impairment rating, which included a musculoskeletal body part, and performed a full physical evaluation with range of motion of the left upper extremity. Therefore, the MAR for this examination is \$300.00.

The submitted documentation supports that Dr. Whitehead performed was required to provide multiple certifications of impairment rating in accordance with 28 Texas Administrative Code §127.10(d), and four additional impairment ratings were provided. Therefore, the correct MAR for this service is \$200.00 in accordance with 28 Texas Administrative Code §134.204(j)(4)(B).

The total MAR for the disputed services is \$850.00. Commerce & Industry Insurance Company reimbursed \$350.00. An additional \$500.00 is recommended.

Conclusion

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$500.00.

ORDER

Based on the submitted information, pursuant to Texas Labor Code Section 413.031 and 413.019 (if applicable), the division has determined the requestor is entitled to additional reimbursement for the disputed services. The division hereby ORDERS the respondent to remit to the requestor \$500.00, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

Authorized Signature

_____	_____ Laurie Garnes _____	_____ June 23, 2017 _____
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with Rule §133.307, effective May 31, 2012, *37 Texas Register 3833*, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the division using the contact information listed on the form or to the field office handling the claim. The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.